

**ASSEMBLY BILL**

**No. 176**

**Introduced by Assembly Member Dickerson**

January 19, 1999

---

---

An act to amend Section 707 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 176, as introduced, Dickerson. Fitness hearings: gross vehicular manslaughter.

Existing law provides that in any case in which a minor is alleged to be subject to the jurisdiction of the juvenile court on the ground that he or she committed any one of specified offenses when he or she was 16 years of age or older, he or she shall be presumed to be not a fit and proper subject to be dealt with under juvenile court law.

This bill would revise that list of offenses to include gross vehicular manslaughter while intoxicated.

By imposing additional duties on local juvenile justice systems similar to those imposed by the creation of a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 707 of the Welfare and  
2 Institutions Code is amended to read:

3 707. (a) In any case in which a minor is alleged to be  
4 a person described in Section 602 by reason of the  
5 violation, when he or she was 16 years of age or older, of  
6 any criminal statute or ordinance except those listed in  
7 subdivision (b), upon motion of the petitioner made prior  
8 to the attachment of jeopardy the court shall cause the  
9 probation officer to investigate and submit a report on the  
10 behavioral patterns and social history of the minor being  
11 considered for a determination of unfitness. Following  
12 submission and consideration of the report, and of any  
13 other relevant evidence which the petitioner or the  
14 minor may wish to submit, the juvenile court may find  
15 that the minor is not a fit and proper subject to be dealt  
16 with under the juvenile court law if it concludes that the  
17 minor would not be amenable to the care, treatment, and  
18 training program available through the facilities of the  
19 juvenile court, based upon an evaluation of the following  
20 criteria:

21 (1) The degree of criminal sophistication exhibited by  
22 the minor.

23 (2) Whether the minor can be rehabilitated prior to  
24 the expiration of the juvenile court's jurisdiction.

25 (3) The minor's previous delinquent history.

26 (4) Success of previous attempts by the juvenile court  
27 to rehabilitate the minor.

28 (5) The circumstances and gravity of the offense  
29 alleged in the petition to have been committed by the  
30 minor.

31 A determination that the minor is not a fit and proper  
32 subject to be dealt with under the juvenile court law may  
33 be based on any one or a combination of the factors set  
34 forth above, which shall be recited in the order of  
35 unfitness. In any case in which a hearing has been noticed  
36 pursuant to this section, the court shall postpone the  
37 taking of a plea to the petition until the conclusion of the

1 fitness hearing, and no plea which may already have been  
2 entered shall constitute evidence at the hearing.

3 (b) Subdivision (c) shall be applicable in any case in  
4 which a minor is alleged to be a person described in  
5 Section 602 by reason of the violation, when he or she was  
6 16 years of age or older, of one of the following offenses:

7 (1) Murder.

8 (2) Arson, as provided in subdivision (a) or (b) of  
9 Section 451 of the Penal Code.

10 (3) Robbery while armed with a dangerous or deadly  
11 weapon.

12 (4) Rape with force or violence or threat of great  
13 bodily harm.

14 (5) Sodomy by force, violence, duress, menace, or  
15 threat of great bodily harm.

16 (6) Lewd or lascivious act as provided in subdivision  
17 (b) of Section 288 of the Penal Code.

18 (7) Oral copulation by force, violence, duress, menace,  
19 or threat of great bodily harm.

20 (8) Any offense specified in subdivision (a) of Section  
21 289 of the Penal Code.

22 (9) Kidnapping for ransom.

23 (10) Kidnapping in violation of subdivision (b) of  
24 Section 209 of the Penal Code.

25 (11) Kidnapping with bodily harm.

26 (12) Attempted murder.

27 (13) Assault with a firearm or destructive device.

28 (14) Assault by any means of force likely to produce  
29 great bodily injury.

30 (15) Discharge of a firearm into an inhabited or  
31 occupied building.

32 (16) Any offense described in Section 1203.09 of the  
33 Penal Code.

34 (17) Any offense described in Section 12022.5 or  
35 12022.53 of the Penal Code.

36 (18) Any felony offense in which the minor personally  
37 used a weapon listed in subdivision (a) of Section 12020  
38 of the Penal Code.

39 (19) Any felony offense described in Section 136.1 or  
40 137 of the Penal Code.

1 (20) Manufacturing, compounding, or selling one-half  
2 ounce or more of any salt or solution of a controlled  
3 substance specified in subdivision (e) of Section 11055 of  
4 the Health and Safety Code.

5 (21) Any violent felony, as defined in subdivision (c)  
6 of Section 667.5 of the Penal Code, which would also  
7 constitute a felony violation of subdivision (b) of Section  
8 186.22 of the Penal Code.

9 (22) Escape, by the use of force or violence, from any  
10 county juvenile hall, home, ranch, camp, or forestry camp  
11 in violation of subdivision (b) of Section 871 where great  
12 bodily injury is intentionally inflicted upon an employee  
13 of the juvenile facility during the commission of the  
14 escape.

15 (23) Torture, as described in Sections 206 and 206.1 of  
16 the Penal Code.

17 (24) Aggravated mayhem, as described in Section 205  
18 of the Penal Code.

19 (25) Carjacking, as described in Section 215 of the  
20 Penal Code, while armed with a dangerous or deadly  
21 weapon.

22 (26) Kidnapping, as punishable in Section 209.5 of the  
23 Penal Code.

24 (27) The offense described in subdivision (c) of  
25 Section 12034 of the Penal Code.

26 (28) The offense described in Section 12308 of the  
27 Penal Code.

28 (29) *Gross vehicular manslaughter while intoxicated*  
29 *as described in Section 191.5 of the Penal Code.*

30 (c) With regard to a minor alleged to be a person  
31 described in Section 602 by reason of the violation, when  
32 he or she was 16 years of age or older, of any of the offenses  
33 listed in subdivision (b), upon motion of the petitioner  
34 made prior to the attachment of jeopardy the court shall  
35 cause the probation officer to investigate and submit a  
36 report on the behavioral patterns and social history of the  
37 minor being considered for a determination of unfitness.  
38 Following submission and consideration of the report,  
39 and of any other relevant evidence which the petitioner  
40 or the minor may wish to submit the minor shall be

1 presumed to be not a fit and proper subject to be dealt  
2 with under the juvenile court law unless the juvenile  
3 court concludes, based upon evidence, which evidence  
4 may be of extenuating or mitigating circumstances, that  
5 the minor would be amenable to the care, treatment, and  
6 training program available through the facilities of the  
7 juvenile court based upon an evaluation of each of the  
8 following criteria:

9 (1) The degree of criminal sophistication exhibited by  
10 the minor.

11 (2) Whether the minor can be rehabilitated prior to  
12 the expiration of the juvenile court's jurisdiction.

13 (3) The minor's previous delinquent history.

14 (4) Success of previous attempts by the juvenile court  
15 to rehabilitate the minor.

16 (5) The circumstances and gravity of the offenses  
17 alleged in the petition to have been committed by the  
18 minor.

19 A determination that the minor is a fit and proper  
20 subject to be dealt with under the juvenile court law shall  
21 be based on a finding of amenability after consideration  
22 of the criteria set forth above, and findings therefor  
23 recited in the order as to each of the above criteria that  
24 the minor is fit and proper under each and every one of  
25 the above criteria. In making a finding of fitness, the court  
26 may consider extenuating or mitigating circumstances in  
27 evaluating each of the above criteria. In any case in which  
28 a hearing has been noticed pursuant to this section, the  
29 court shall postpone the taking of a plea to the petition  
30 until the conclusion of the fitness hearing and no plea  
31 which may already have been entered shall constitute  
32 evidence at the hearing.

33 (d) (1) In any case in which a minor is alleged to be  
34 a person described in Section 602 by reason of the  
35 violation, when he or she had attained the age of 14 years  
36 but had not attained the age of 16 years, of any of the  
37 offenses set forth in paragraph (2), upon motion of the  
38 petitioner made prior to the attachment of jeopardy the  
39 court shall cause the probation officer to investigate and  
40 submit a report on the behavioral patterns and social

1 history of the minor being considered for a determination  
2 of unfitness. Following submission and consideration of  
3 the report, and of any other relevant evidence that the  
4 petitioner or the minor may wish to submit, the juvenile  
5 court may find that the minor is not a fit and proper  
6 subject to be dealt with under the juvenile court law if it  
7 concludes that the minor would not be amenable to the  
8 care, treatment, and training program available through  
9 the facilities of the juvenile court, based upon an  
10 evaluation of the following criteria:

11 (A) The degree of criminal sophistication exhibited by  
12 the minor.

13 (B) Whether the minor can be rehabilitated prior to  
14 the expiration of the juvenile court's jurisdiction.

15 (C) The minor's previous delinquent history.

16 (D) Success of previous attempts by the juvenile court  
17 to rehabilitate the minor.

18 (E) The circumstances and gravity of the offense  
19 alleged in the petition to have been committed by the  
20 minor.

21 A determination that the minor is not a fit and proper  
22 subject to be dealt with under the juvenile court law may  
23 be based on any one or a combination of the factors set  
24 forth above, which shall be recited in the order of  
25 unfitness. In any case in which a hearing has been noticed  
26 pursuant to this subdivision, the court shall postpone the  
27 taking of a plea to the petition until the conclusion of the  
28 fitness hearing, and no plea that may already have been  
29 entered shall constitute evidence at the hearing.

30 (2) Paragraph (1) shall be applicable in any case in  
31 which a minor is alleged to be a person described in  
32 Section 602 by reason of the violation, when he or she had  
33 attained the age of 14 years but had not attained the age  
34 of 16 years, of one of the following offenses:

35 (A) Murder.

36 (B) Robbery in which the minor personally used a  
37 firearm.

38 (C) Rape with force or violence or threat of great  
39 bodily harm.



- 1 (D) Sodomy by force, violence, duress, menace, or  
2 threat of great bodily harm.
- 3 (E) Oral copulation by force, violence, duress,  
4 menace, or threat of great bodily harm.
- 5 (F) The offense specified in subdivision (a) of Section  
6 289 of the Penal Code.
- 7 (G) Kidnapping for ransom.
- 8 (H) Kidnapping in violation of subdivision (b) of  
9 Section 209 of the Penal Code.
- 10 (I) Kidnapping with bodily harm.
- 11 (J) Kidnapping, in violation of Section 209.5 of the  
12 Penal Code.
- 13 (K) The offense described in subdivision (c) of Section  
14 12034 of the Penal Code, in which the minor personally  
15 used a firearm.
- 16 (L) Personally discharging a firearm into an inhabited  
17 or occupied building.
- 18 (M) Manufacturing, compounding, or selling one-half  
19 ounce or more of any salt or solution of a controlled  
20 substance specified in subdivision (e) of Section 11055 of  
21 the Health and Safety Code.
- 22 (N) Escape, by the use of force or violence, from any  
23 county juvenile hall, home, ranch, camp, or forestry camp  
24 in violation of subdivision (b) of Section 871 where great  
25 bodily injury is intentionally inflicted upon an employee  
26 of the juvenile facility during the commission of the  
27 escape.
- 28 (O) Torture, as described in Section 206 of the Penal  
29 Code.
- 30 (P) Aggravated mayhem, as described in Section 205  
31 of the Penal Code.
- 32 (Q) Assault with a firearm in which the minor  
33 personally used the firearm.
- 34 (R) Attempted murder.
- 35 (S) Rape in which the minor personally used a firearm.
- 36 (T) Burglary in which the minor personally used a  
37 firearm.
- 38 (U) Kidnapping in which the minor personally used a  
39 firearm.

1 (V) The offense described in Section 12308 of the  
2 Penal Code.

3 (W) Carjacking in which the minor personally used a  
4 firearm.

5 (e) This subdivision shall apply to a minor alleged to be  
6 a person described in Section 602 by reason of the  
7 violation, when he or she had attained the age of 14 years  
8 but had not attained the age of 16 years, of the offense of  
9 murder in which it is alleged in the petition that one of  
10 the following exists:

11 (1) In the case of murder in the first or second degree,  
12 the minor personally killed the victim.

13 (2) In the case of murder in the first or second degree,  
14 the minor, acting with the intent to kill the victim, aided,  
15 abetted, counseled, commanded, induced, solicited,  
16 requested, or assisted any person to kill the victim.

17 (3) In the case of murder in the first degree, while not  
18 the actual killer, the minor, acting with reckless  
19 indifference to human life and as a major participant in  
20 a felony enumerated in paragraph (17) of subdivision (a)  
21 of Section 190.2 of the Penal Code, or an attempt to  
22 commit that felony, aided, abetted, counseled,  
23 commanded, induced, solicited, requested, or assisted in  
24 the commission or attempted commission of that felony  
25 and the commission or attempted commission of that  
26 felony or the immediate flight therefrom resulted in the  
27 death of the victim.

28 Upon motion of the petitioner made prior to the  
29 attachment of jeopardy, the court shall cause the  
30 probation officer to investigate and submit a report on the  
31 behavioral patterns and social history of the minor being  
32 considered for a determination of unfitness. Following  
33 submission and consideration of the report, and of any  
34 other relevant evidence which the petitioner or the  
35 minor may wish to submit, the minor shall be presumed  
36 to be not a fit and proper subject to be dealt with under  
37 the juvenile court law unless the juvenile court concludes,  
38 based upon evidence, which evidence may be of  
39 extenuating or mitigating circumstances, that the minor  
40 would be amenable to the care, treatment, and training



1 program available through the facilities of the juvenile  
2 court based upon an evaluation of each of the following  
3 criteria:

4 (A) The degree of criminal sophistication exhibited by  
5 the minor.

6 (B) Whether the minor can be rehabilitated prior to  
7 the expiration of the juvenile court's jurisdiction.

8 (C) The minor's previous delinquent history.

9 (D) Success of previous attempts by the juvenile court  
10 to rehabilitate the minor.

11 (E) The circumstances and gravity of the offenses  
12 alleged in the petition to have been committed by the  
13 minor.

14 A determination that the minor is a fit and proper  
15 subject to be dealt with under the juvenile court law shall  
16 be based on a finding of amenability after consideration  
17 of the criteria set forth above, and findings therefor  
18 recited in the order as to each of the above criteria that  
19 the minor is fit and proper under each and every one of  
20 the above criteria. In making a finding of fitness, the court  
21 may consider extenuating or mitigating circumstances in  
22 evaluating each of the above criteria. In any case in which  
23 a hearing has been noticed pursuant to this section, the  
24 court shall postpone the taking of a plea to the petition  
25 until the conclusion of the fitness hearing and no plea  
26 which may already have been entered shall constitute  
27 evidence at the hearing.

28 (f) Any report submitted by a probation officer  
29 pursuant to this section regarding the behavioral patterns  
30 and social history of the minor being considered for a  
31 determination of unfitness shall include any written or  
32 oral statement offered by the victim, the victim's parent  
33 or guardian if the victim is a minor, or if the victim has  
34 died, the victim's next of kin, as authorized by subdivision  
35 (b) of Section 656.2. Victims' statements shall be  
36 considered by the court to the extent they are relevant to  
37 the court's determination of unfitness.

38 SEC. 2. No reimbursement is required by this act  
39 pursuant to Section 6 of Article XIII B of the California  
40 Constitution because the only costs that may be incurred

1 by a local agency or school district will be incurred  
2 because this act creates a new crime or infraction,  
3 eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section  
5 17556 of the Government Code, or changes the definition  
6 of a crime within the meaning of Section 6 of Article  
7 XIII B of the California Constitution.

8 Notwithstanding Section 17580 of the Government  
9 Code, unless otherwise specified, the provisions of this act  
10 shall become operative on the same date that the act  
11 takes effect pursuant to the California Constitution.

